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Supreme Court, U.S.

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No. _____

**In The
Supreme Court of the United States**

October Term, 1989

ST. JOSEPH'S HOSPITAL AND MEDICAL CENTER,
Petitioner,

v.

MARICOPA COUNTY,
Respondent.

***Petition For
Writ Of Certiorari
To The
Arizona Court Of Appeals***

Petition For Writ Of Certiorari

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QUESTION PRESENTED

Whether the government effects an unconstitutional taking of private property without just compensation and a denial of due process by forcing a private hospital to render emergency medical care, and then denying all reimbursement for that care on the basis of property which the hospital cannot even theoretically reach in payment of its bill.

PARTIES

The caption contains the names of all parties to the proceedings below in the Arizona Court of Appeals. Petitioner St. Joseph's Hospital and Medical Center, Inc., is an Arizona non-profit corporation. The parent and subsidiary corporations required to be listed by Rule 29.1 of this Court are Catholic Healthcare West, a California corporation, Mercy Care Foundation, Inc., Arizona Health Ventures, Inc., Mercy Services Corporation-Phoenix, and Southwest Catholic Health Network, Inc., all Arizona corporations.

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Petition For Writ Of Certiorari

OPINION BELOW

The opinion of the Arizona Court of Appeals is included in the Appendix hereto. It is reported at 163 Ariz. 132, 786 P.2d 983 (App. 1989). The Arizona Supreme Court declined to review the opinion without comment.

JURISDICTION

The Superior Court of Arizona in and for Maricopa County entered judgment for defendant Maricopa County on November 18, 1987. The Arizona Court of Appeals affirmed in its opinion filed on September 7, 1989. The Supreme Court of Arizona declined review without comment on February 26,

1990. This Court's jurisdiction is invoked under 28 U.S.C. § 1257.

STATUTES AND CONSTITUTIONAL PROVISIONS

The pertinent authorities are Ariz. Rev. Stat. Ann. §§ 11-297, 25-214, 25-215, and U.S. Const. amends. V and XIV. These authorities are included in the Appendix.

STATEMENT OF THE CASE

This case offers the Court the opportunity to address the government's authority to force a private hospital to provide emergency medical care to patients without any regard for the hospital's legal ability to obtain reimbursement. The government forced petitioner St. Joseph's Hospital to treat an impecunious patient and then denied the hospital any reimbursement by refusing to characterize the patient as "indigent" because his spouse owned certain disqualifying assets as her separate property. Although Justice (then Judge) O'Connor observed in *St. Joseph's Hospital and Medical Center v. Maricopa County*, 130 Ariz. 239, 635 P.2d 527 (App. 1981), that government compulsion in the absence of any reimbursement could result in an unconstitutional taking, the Arizona Court of Appeals in this case dismissed Justice O'Connor's earlier suggestion as "mischievous" and proceeded to uphold the government's conscription of the hospital's services. As discussed below, neither the inherent societal value of emergency medical care nor the inability of a poor person to purchase such care can justify what is nothing more than a coerced transfer of property from one private party to another.

Petitioner St. Joseph's Hospital and Medical Center, Inc. owns and operates a hospital in Phoenix, Arizona. Under Arizona law a private hospital must provide emergency care to anyone in need without regard to the patient's ability to pay. *Guerrero v. Copper Queen Hospital*, 112 Ariz. 104, 537 P.2d 1329 (1975). Certain low income patients may qualify for Arizona's Medicaid program and, pursuant to Ariz. Rev. Stat. Ann. § 11-291 *et seq.*, Arizona's counties must reimburse a private hospital for providing emergency care to an eligible

"indigent" patient. The hospital filed this lawsuit to obtain reimbursement from Maricopa County for roughly \$50,000 in medical services provided to Donald Neu, a patient whose own income and assets plainly qualified him as "indigent" and thus eligible to receive county benefits. The County refused to certify Mr. Neu's eligibility because his spouse owned certain valuable assets as her sole and separate property.

The relevant eligibility statute, Ariz. Rev. Stat. Ann. § 11-297(B)(2), now amended, defined as "indigent" one who "[d]oes not have resources of all persons in the household" with a net worth in excess of \$30,000. Under Arizona's community property laws, Mr. Neu had no right to manage, control or dispose of Mrs. Neu's separate assets and St. Joseph's had no right to collect its charges out of those assets. Ariz. Rev. Stat. Ann. §§ 25-214, -215. Since Mr. Neu was an emergency patient, the hospital could not condition his treatment on Mrs. Neu's willingness to pay the bill out of her separate property. Acknowledging the "harsh" result, the trial court refused to reconcile the eligibility statute with Arizona's community property laws and concluded that the separate property of Mr. Neu's spouse rendered him ineligible for county assistance. In granting Maricopa County's motion for summary judgment the trial court summarily rejected the hospital's takings and due process arguments without analysis. (See minute entry ruling, dated October 16, 1987, in Appendix).

The Arizona Court of Appeals affirmed and compounded the error by publishing an opinion which superficially, and mistakenly, analyzes the hospital's constitutional takings and due process arguments. *St. Joseph's Hospital and Medical Center v. Maricopa County*, 163 Ariz. 132, 786 P.2d 983 (App. 1989). In dismissing the hospital's takings and due process arguments, the Court of Appeals found that its interpretation of the statute advanced the public's "common good" because it "encourage[d] families to pay for services rendered for family members rather than allowing that burden to fall on state coffers." 163 Ariz. at 137, 786 P.2d at 988. The Court as-

sumed that St. Joseph's loss would be "absorbed by the hospital as a cost of doing business" and "ultimately passed on to the consumer." *Id.*

The Arizona Supreme Court declined to review this case, without comment, on February 26, 1990.

REASONS FOR GRANTING THE WRIT

Under the reasoning of the Arizona courts the government may compel a private hospital to provide free medical care while simultaneously denying the hospital any ability, even theoretical, to obtain reimbursement. The Court should grant the writ in order to consider whether the public's admitted need for emergency health care inherently confers a *carte blanche* right on the government to force hospitals to render those services for free.

I. The County's Failure To Reimburse St. Joseph's For Its Emergency Medical Services Caused An Unconstitutional Taking Of Private Property Without Just Compensation.

Under the Fifth Amendment the government may not force "some people alone to bear public burdens which, in all fairness and justice, should be borne by the public as a whole." *Armstrong v. United States*, 364 U.S. 40, 49, 80 S.Ct. 1563, 1569, (1960). Although there is no "set formula," the takings analysis requires consideration of both the governmental interest being served, as well as the nature of the economic loss imposed upon a private party. *Penn Central Transp. Co. v. City of New York*, 438 U.S. 104, 124, 98 S. Ct. 2646, 2659 (1978). It is no less a taking if the government takes a private person's services or property, not for itself, but rather for some other private person or persons. See e.g. *Pennel v. City of San Jose*, 485 U.S. 1, 108 S. Ct. 849 (1988).

While everyone can agree that Arizona's eligibility ceilings are unreasonably low (e.g., a maximum allowable annual income of \$2,500 for a household of one), and that these low guidelines directly affect hospital reimbursement, St. Joseph's is not challenging the eligibility standards themselves. In theory, the purpose of drawing eligibility lines is to dis-

tinguish between those individuals who can afford to pay for their care and those who cannot. In reality, the lines are drawn to distinguish between those for whom the government will pay and those whose income or assets are deemed to be sufficiently high that the hospital is left to assume the credit risks associated with a self-pay account.

In terms of his own income and property, Mr. Neu was clearly "indigent" under the statutory definition and, as such, was presumed to have been unable to pay for his medical care. By including his spouse's separate property in the calculation, however, the County moved him into the group of patients who, in theory, have sufficient resources to pay for medical care. Mr. Neu was thus presumed to be able to pay the hospital on the basis of property he did not own and could not control, and which was legally beyond the reach of St. Joseph's. The government forced the hospital to provide medical care to Mr. Neu, refused to pay the hospital for such care and placed him in a class of people deemed to be "collectible" when, under Arizona community property laws, he and his wife were plainly immune from collection efforts.

The element of governmental compulsion is plainly present in this case by virtue of Arizona's statutory requirement that a private hospital treat every person requiring emergency care without regard to his ability to pay. *Guerrero v. Copper Queen Hospital*, 112 Ariz. 104, 537 P.2d 1329 (1975). The hospital acknowledges that the public has an interest in assuring that medical care is available to the rich and poor alike, but that interest is irrelevant to the analysis of this case. An eligible poor person in Arizona can receive both emergency and elective care through the dual health care systems operated by the counties and the Medicaid program. In addition, as noted above, a private hospital must provide necessary emergency medical care without regard to the patient's ability to pay for those services. As a result, and wholly apart from the resolution of the issues raised in this case, the government's interest in assuring the availability of health care is unquestionably being served.

In an effort to justify the conscription of St. Joseph's services, the Arizona Court of Appeals purported to identify another governmental interest in this case. The Court concluded that including the separate property of a patient's spouse in the eligibility determination process "encourage[d] family members to use their private resources to pay for medical care rather than allowing that burden to fall on public coffers." 163 Ariz. at 137, 786 P.2d at 988. Any other system "would create a disincentive for those with adequate assets to provide for the health needs of an indigent spouse." *Id.* In identifying this interest, however, the Court of Appeals failed to recognize the difference between elective and emergency care. The Court's reasoning may make sense in the elective context since a private hospital may condition its willingness to treat the patient upon the spouse's agreement to pay for the care with his or her separate property.

This supposed governmental interest, however, is meaningless in the context of emergency care. A patient in need of emergency care, such as Mr. Neu, will receive that care at a private hospital regardless of his financial condition or the financial condition of his family. It makes no sense to talk about incentives or disincentives when the private hospital must, and will, provide necessary emergency care and legally cannot look to a spouse's separate property for payment. The governmental interest identified by the Arizona Court of Appeals — that of creating an incentive for family members to pay for a patient's care — is thus illusory in the context of emergency treatment.

With no legitimate governmental interest on the other side of the equation, the very real financial loss suffered by St. Joseph's plainly tilts the takings analysis in its favor. Rather than acknowledge the hospital's financial loss, the Arizona Court of Appeals pointed to the lack of accounting evidence in the record and asserted that it could not assess the impact of the loss on the hospital's overall profitability or on its "investment-backed expectations." Instead, the Court

seemed satisfied with concluding that the hospital's "bad debts" were probably just shifted to its paying patients.

No accounting data is needed for the Court to conclude that the government has taken private property without compensation when it has forced the hospital to treat a patient and, at the same time, interpreted the eligibility statutes so as to make it impossible, even in theory, for the hospital to obtain reimbursement from any source. Whether the victim of a government seizure is able to absorb the loss is irrelevant. A wealthy corporation is entitled to receive compensation for a seizure of its property even though it may have earned a profit despite the taking. Even a heavily regulated utility, while it may be guaranteed a rate of return, is entitled to receive compensation if the government seizes some of its property. Private hospitals in Arizona are not utilities, they are not subject to rate regulation and they are not guaranteed a reasonable rate of return. By forcing a hospital to provide expensive medical care to a person who, by definition, cannot possibly pay for such care, the government has shifted a public burden to a private facility.

An earlier lawsuit between the same parties resulted in an opinion by Justice O'Connor addressing a similar takings argument. In *St. Joseph's Hospital v. Maricopa County*, 130 Ariz. 329, 635 P.2d 527 (App. 1981), St. Joseph's sought reimbursement of its full billed charges, rather than payment at the lower Medicare rate, on the basis that fair market value is the measure of compensation for property involuntarily taken by the government. Justice O'Connor observed that there had not been a taking in an earlier case in which providers had been reimbursed at less than their costs because they had not been legally obligated to treat the patients. In what the Arizona Court of Appeals referred to in this case as a "mischievous" footnote, Justice O'Connor suggested that the result may have been different if the providers had been obligated to treat the patients. 130 Ariz. at 337 n. 9, 635 P.2d at 535 n. 9. This case presents the takings issue in its most

extreme setting since St. Joseph's was legally compelled to treat Mr. Neu but received absolutely no compensation.

This Court's decision in *Pennell v. City of San Jose*, 485 U.S. 1, 108 S. Ct. 849 (1988), casts further doubt on the cursory dismissal of St. Joseph's constitutional arguments. In *Pennell* the Court considered whether a "tenant hardship" provision in a city's rent control ordinance resulted in the taking of landlords' property without compensation. Although the majority ruled that the taking argument was premature, Justice Scalia, joined by Justice O'Connor, concluded in a concurring opinion that the Court should have reached the issue and, on the merits, that the ordinance resulted in a taking of private property. They recognized that the "tenant hardship" provision was no more than a forced transfer of wealth from one private party to another:

The traditional manner in which American government has met the problem of those who cannot pay reasonable prices for privately sold necessities — a problem caused by the society at large — has been the distribution to such persons of funds raised from the public at large through taxes, either in cash (welfare payments) or in goods (public housing, publicly subsidized housing, and food stamps). Unless we are to abandon the guiding principle of the Takings Clause that "public burdens . . . should be borne by the public as a whole." *Armstrong, supra*, 364 U.S., at 49, 80 S. Ct., at 1569, this is the only manner that our Constitution permits. The fact that government acts through the landlord/tenant relationship does not magically transform general public welfare, which must be supported by all the public, into mere "economic regulation," which can disproportionately burden particular individuals. Here the City is not "regulating" rents in the relevant sense of preventing rents that are excessive; rather, it is using the occasion of rent regulation (accomplished by the rest of the Ordinance) to establish a welfare program privately funded

by those landlords who happen to have "hardship tenants."

* * *

Subsidies . . . may well be a good idea, but because of the operation of the Takings Clause our governmental system has required them to be applied, in general, through the process of taxing and spending, where both economic effects and competing priorities are more evident.

That fostering of an intelligent democratic process is one of the happy effects of the constitutional prescription — perhaps accidental, perhaps not. Its essence, however, is simply the unfairness of making one citizen pay, in some fashion other than taxes, to remedy a social problem that is none of his creation. 485 U.S. at ___, 108 S. Ct. at 863-64.

Politicians are all too eager to give away benefits when they can do so at someone else's expense. The Fifth Amendment surely would not permit the government to require a grocery store to distribute free food to a legislatively defined group, however disadvantaged the group may be. An auto parts dealer cannot be required to give away auto parts. The courts routinely recognize that a landowner who loses a tiny portion of his property to freeway expansion is automatically entitled to just compensation, even though the remainder of his property may retain its value, or even increase in value as a result of the freeway location.

The analysis should be no different in the area of health care. Hospitals are in a fight for survival as they are squeezed between spiraling costs of providing services on one hand and a host of factors depressing revenues on the other. For example, the Medicare program has imposed severe restraints on hospital reimbursement forcing hospitals to provide services at, or often below, cost. In Arizona, still further restrictions have been imposed in the area of indigent health care in the form of rate freezes and steep mandatory discounts. The fact that emergency services represent a commodity "needed" by the public, or that hospitals are often non-profit entities

with religious affiliations, does not justify forcing hospitals to provide their services for free.

For decades St. Joseph's has been proud to provide emergency medical care to anyone in need. At least for now, the hospital is willing to assume the credit risks associated with trying to collect from those individuals who are not "indigent" based upon their own financial conditions. The government has taken the hospital's property, however, when it treats an indigent person as non-indigent on the basis of his spouse's separate property which cannot be reached by the hospital.

II. The County's Interpretation Of The Statute Is Arbitrary And Irrational And Denies St. Joseph's Due Process Of Law.

Economic and social welfare legislation that is not rationally related to a legitimate governmental objective or that creates an irrational conclusive presumption violates the due process clause. *Village of Belle Terre v. Boraas*, 416 U.S. 1, 94 S. Ct. 1536 (1974); *United States Department of Agriculture v. Murry*, 413 U.S. 508, 93 S.Ct. 2832 (1973). The interpretation of Ariz. Rev. Stat. Ann. § 11-297(B)(2) advanced by the County and adopted by the Arizona courts bears no rational relationship to a legitimate state interest and thus violates the due process cause.

As discussed above, the government's interest in assuring the availability of health care to all persons is satisfied through the dual Medicaid and county indigent health systems and the requirement that private hospitals treat emergency patients without regard to ability to pay. Similarly, the discussion above reflects that it is irrational to interpret the eligibility statute based upon whether it will encourage or discourage household members to pay for a patient's emergency care. By the time the hospital was legally permitted to focus on payment, the patient had already received all of the medical care he required. He had no assets from which the hospital could collect and his wife's separate property was beyond the hospital's reach.

St. Joseph's may be more willing to believe in miracles than most private corporations, but it is difficult to believe that too many people will step forward, after the emergency care has already been provided, and volunteer to pay a hospital bill that they are not legally obligated to pay. It did not happen in this case, it happens rarely (if at all) and the possibility is so remote that it does not rise to the level of a legitimate state interest. While the legislature's purported policy of encouraging voluntary interspousal support may be sensible in elective cases, it is irrational in the emergency context.

CONCLUSION

For the reasons stated, petitioner St. Joseph's Hospital and Medical Center, Inc. urges the Court to grant its petition for a writ of certiorari.

Respectfully submitted,
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May 25, 1990



APPENDIX

OPINION BELOW

ST. JOSEPH'S HOSPITAL AND
MEDICAL CENTER,
an Arizona corporation

Plaintiff-Appellant,

v.

MARICOPA COUNTY, a body politic,
Defendant-Appellee.

No. 1

CA-CIV 88-047.

Court of Appeals
of Arizona

Division 1,
Department D.
Sept. 7, 1989.

Review Denied
Feb. 26, 1990

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OPINION

SHELLEY, Judge.

This case deals with the statute that defines indigency for purposes of public health assistance. We hold that the statute must be construed to render a patient ineligible for public assistance if his spouse owns separate property that exceeds the maximum set by the statute. We also hold that the statute, so construed, does not offend due process and does not work an unconstitutional taking of property.

BACKGROUND

Donald Neu was admitted as an emergency patient to St. Joseph's Hospital and Medical Center in April of 1985, and he remained hospitalized there for almost two months, incurring charges of over \$50,000, of which he paid only a small part. St. Joseph's sought reimbursement of most of the balance due from Maricopa County, and the county refused to pay, claiming that Neu was not eligible for assistance.

For the purposes of this appeal, eligibility for county health care is determined under the version of A.R.S. § 11-297(B)(2) that was in effect in 1985. An indigent was then defined as a resident of the county whose income does not exceed a specific level, and

[d]oes not have resources of all persons in the household, including but not limited to equity in a house or car, with a net worth in excess of thirty thousand dollars, with no more than five thousand dollars cash or other liquid assets.

A.R.S. § 11-297(B)(2) (1985 Ariz.Sess.Laws ch. 316, § 5).¹

Donald Neu's assets at the time of his hospitalization totaled substantially less than \$30,000. His wife owned, as her sole and separate property, the home in which they lived, a part interest in a shopping center, and some automobiles. Because the value of Mrs. Neu's separate property exceeded the statutory maximum, Maricopa County determined that Donald Neu was not "indigent" and was therefore not eligible for county health services. Maricopa County denied St. Joseph's

¹ A.R.S. § 11-297(B)(2) has been subsequently amended, increasing the limitation on resources from \$30,000 to \$50,000. 1986 Ariz.Sess.Laws ch. 380, § 2. The statute was again amended to add:

For an individual applicant who is married, any separate property of the applicant's spouse that does not exceed seventy-five thousand dollars shall not be included in determining the net worth of resources of the applicant. 1988 Ariz.Sess.Laws ch. 3, § 1. All textual references to A.R.S. § 11-297(B)(2) are to the 1985 version, unless otherwise noted.

claim for reimbursement of Donald's Neu's hospitalization charges.

St. Joseph's sued the county on its claim, and the trial court, agreeing with the county's position, granted summary judgment in its favor.

On appeal, we consider the following questions:

A. Statutory Interpretation: Whether the separate property of a spouse can be considered in determining an individual's indigency pursuant to A.R.S. § 11-297(B)(2);

B. Due Process: Whether A.R.S. § 11-297(B)(2) is arbitrary and denies Donald Neu and St. Joseph's due process;

C. Unconstitutional Taking: Whether Maricopa County's failure to reimburse St. Joseph's for emergency services is an unconstitutional taking of private property without just compensation; and

D. Restitution: Whether St. Joseph's is entitled to recover from Maricopa County for services rendered under a theory of restitution.

We decide each of these issues in favor of Maricopa County.

THE SEPARATE PROPERTY OF A SPOUSE MAY BE CONSIDERED IN DETERMINING INDIGENCY

The parties agree that the medical expenses of a spouse are not collectable out of the separate property of the other spouse. Donald Neu's medical expenses were payable only out of the community income and assets and Donald's separate property. For the purpose of this opinion, we accept that as the law.²

² We note that in California, a spouse's separate property may be reached to satisfy debts incurred for the other spouse's "necessaries of life." Cal.Civ.Code 5120.140(a)(1) (West Supp. 1989); *In re Higgason's Marriage*, 110 Cal.Rptr.897, 10 Cal.3d 476, 516 P.2d 289 (1973). There is no comparable civil statute in Arizona.

To be eligible for county health care benefits, a person must have income below a specified level and may not have "resources of all persons in the household" in excess of \$30,000 with not more than \$5,000 in cash or other liquid assets, A.R.S. § 11-297(B)(2). According to St. Joseph's, Arizona community property principles and public policy require that the phrase "resources of all persons in the household" in § 11-297(B)(2) be construed to include only assets actually available to the patient or his creditors. So construed, the statute would require the county to reimburse the hospital for Neu's care.

[1] Eligibility statutes, the hospital argues, must be liberally construed with the dual purposes of delivering health care to those who cannot afford it and protecting a private hospital's right to receive reimbursement from the county. It cites a number of Arizona decisions for this premise. Although we acknowledge the underlying principle, none of the cases cited offer specific guidance in determining whether "resources of the household" must be construed to exclude a spouse's separate property when the plain language of A.R.S. § 11-297(B)(2) states otherwise.

[2] St. Joseph's also cites cases from other jurisdictions for the proposition that welfare statutes or regulations cannot preempt community property principles. *See Harper v. New Mexico Dept. of Human Services*, 95 N.M. 471, 623 P.2d 985 (1980); *Duran v. New Mexico Dept. of Human Services*, 95 N.M. 196, 619 P.2d 1240 (App.1980); *see also Purser v. Rahm*, 104 Wash.2d 159, 702 P.2d 1196 (1985), *cert. dismissed*, 478 U.S. 1029, 107 S.Ct. 8, 92 L.Ed.2d 763 (1986), all holding that the uniform federal regulation, which was meant to apply to all states (both community and non-community property), had to be interpreted in the context of local law. These decisions shed little light on how the specific problem before us is to be resolved. In this case, the same legislature which has codified our community property law enacted A.R.S. § 11-297.

St. Joseph's also cites *Herrera v. Health & Social Services*, 92 N.M. 331, 587 P.2d 1342 (App.1978), which held that the word "income," as used in New Mexico's eligibility statute, had to be interpreted in light of that state's community property law. The upshot was that since half the patient's income belonged to his wife under community property principles, he was under the maximum limit to qualify for public assistance. The problem is that in the context of the New Mexico statute, "income," was a more ambiguous term than the phrase, "resources of all persons in the household," which we deal here.

In our opinion, this phrase, "resources of all persons in the household," unmistakably indicates an intent to include a spouse's separate property. No limitation of the type of resources — separate or community — is expressed in the statute. To construe it otherwise would require reading into the statute something that the legislature did not put there. This, we ought not do. *City of Phoenix v. Donofrio*, 99 Ariz. 130, 133, 407 P.2d 91, 93 (1965).

As noted in footnote 1 to this opinion, the legislature has recently amended the relevant statute to exempt the first \$75,000 of the spouse's separate assets from the indigency calculation. From this action, we can infer that the legislature was aware of the county's policy to include all separate property in the calculation. The amendment does not reveal whether the county's policy comported with the legislature's intent under the old statute. The amendment is either a liberalization of the qualification guidelines, or a restriction of it, depending on one's viewpoint. In either case, the legislation now clearly requires that a spouse's separate property — albeit only that which exceeds \$75,000 — be included in the indigency calculation. The legislature was obviously aware of community property principles when it first enacted § 11-297(B)(2). If it intended community property principles to temper the eligibility calculation, it could have expressly done so, as evidenced by the recent amendment.

THE STATUTE DOES NOT OFFEND DUE PROCESS

We turn to St. Joseph's argument that the statute, as we construe it, is arbitrary, capricious, and violative of the due process clauses of the state and federal constitutions.

[3] Economic regulations need only be rationally related to a legitimate state interest. *Arizona Downs v. Arizona Horsemen's Found.*, 130 Ariz. 550, 555, 637 P.2d 1053, 1058 (1981). See also Comment, *Economic Substantive Due Process in Arizona: A Survey*, 20 Ariz.St.L.J. 327 (1988). St. Joseph's acknowledges this well-settled principle but claims that the inclusion of a spouse's separate property in the indigency calculation is irrational. We disagree.

[4] As St. Joseph's acknowledges, the legislature may and must draw financial eligibility lines somewhere. Under current eligibility criteria, a married couple can earn no more than \$3,333 per year to qualify as indigent. This line is necessarily arbitrary, and, we realize, not realistically calculated to provide adequate health care for any but the poorest of the poor. Those who make more than \$3,333 per year and cannot afford medical care are simply on their own, except in one respect — if they present themselves at a hospital for emergency treatment, they cannot be turned away. See *Thompson v. Sun City Comm. Hosp.*, 141 Ariz. 597, 602, 688 P.2d 605, 610 (1984).

As we have already observed, St. Joseph's acknowledges that the legislature must "draw the line somewhere." St. Joseph's admits that the county is not required to reimburse the hospital for those emergency patients who do not qualify under the basic indigency guidelines. However, it challenges a detail in the legislature's drawing of the line when it contends that the legislature so unreasonably narrows its prospects of reimbursement as to violate due process when the legislature includes within the calculation of household assets available to the patient the separate property of the patient's spouse.

We cannot agree that including a spouse's separate property as a legislative exercise in line-drawing lacks sufficient

rationality to satisfy the requirements of due process. St. Joseph's argues that the inclusion of separate property creates an irrebuttable and irrational presumption that an indigent whose household assets exceed the limit can afford health care. In some cases, spouses will no doubt decline to pay. It is not, however, irrational that the legislature expect that those possessing sufficient separate assets will voluntarily pay for a spouse's necessary medical care. The system St. Joseph's proposes — that separate assets be excluded — would create a disincentive for those with adequate assets to provide for the health needs of an indigent spouse. This, apparently, is not the policy the legislature has chosen to adopt.

We turn to St. Joseph's next argument, that the system effects an unconstitutional taking of its property without just compensation.

THE STATUTE IS NOT AN UNCONSTITUTIONAL TAKING OF THE HOSPITAL'S PROPERTY

[5] St. Joseph's asserts that if a patient's indigency is determined by including the separate property of his spouse, which cannot be reached by a private hospital for the payment of hospital bills, the statute violates the "taking" clauses of the state and federal constitutions. It posits that the private property taken was the use of its services, facilities, and supplies, because, in Arizona, hospitals must provide emergency treatment regardless of the person's ability to pay. *Thompson*, 141 Ariz. at 602, 688 P.2d at 610. We disagree.

In reality, St. Joseph's claim is that the *indigency calculation*, together with the requirement that the hospital *must treat* all emergency patients, constitutes a taking. The logical extension of this argument, as the county points out, is that any time the hospital is unable to collect on its emergency bill, the county (or state) must pay. St. Joseph's cites a mischievous footnote in *St. Joseph's Hospital v. Maricopa County*, 130 Ariz. 239, 635 P.2d 527 (App. 1981). That footnote referred to the suggestion made by a Massachusetts court in an earlier case, that if a hospital were requested to accept in-

digents and the public authorities refused to pay, such *might* constitute a taking. The suggestion was mere dicta.

Traditional eminent domain cases shed some light on the question. The typical eminent domain case involves the taking or regulation of real property which diminishes or destroys the value of that property to the owner and provides a direct benefit to the state. This case is atypical because the benefit — emergency health care — inures to the patient directly. The only fiscal benefit the state enjoys is that it does not have to pay for the patient's care, unless the patient qualifies as indigent. There is some authority for the proposition that the government must pay for an unconstitutional taking of property, even if it is another who derives the benefit. *See Ivey v. United States*, 88 F.Supp. 6, 8 (E.D.Tenn. 1950). In any event, the eminent domain analysis provided in property-use-regulation cases will be our guide.

As we stated in *Corrigan v. City of Scottsdale*, 149 Ariz. 553, 720 P.2d 528 (App.1985) *aff'd in relevant part*, 149 Ariz. 538, 720 P.2d 513 (1986):

There are not set formulas for determining at which point a regulation effects a taking of property . . . Rather a two step process is required. First, we must determine *whether a legitimate state interest is substantially advanced* by the ordinance at issue . . . Second, we focus on *whether the ordinance denies the owner the economically viable use of the land* . . . Ultimately the issue is whether the public at large, rather than a few land-owners should bear the burden of an exercise of police power.

Id. 149 Ariz. at 560, 720 P.2d at 535 (citations omitted) (emphasis added). *See also Ranch 57 v. City of Yuma*, 152 Ariz 218, 225-26, 731 P.2d 113, 120-21 (App.1986).

1. **Legitimate State Interest.**

In this case, we deal with the operation of two regulations that purportedly effect a taking. The first is a regulation developed by case law — that hospitals are required to accept

emergency patients without regard to their ability to pay. We think it is beyond discussion that this requirement advances a legitimate state interest. As our supreme court stated in *Thompson*:

'If a person, seriously hurt, applies for . . . aid at an emergency ward . . . a refusal might well result in worsening the condition of the injured person, because of the time lost in a useless attempt to obtain medical aid.'

141 Ariz. at 602 n. 3, 688 P.2d at 610 n. 3 (citations omitted).

The state's interest in the indigency calculation also is legitimate. As discussed earlier in this opinion, the legislature must "draw lines" in order to allocate scarce resources. Including separate property in a household's resources for indigency purposes encourages family members to use their private resources to pay for medical care rather than allowing that burden to fall on public coffers. Therefore, we answer the first question posed in *Corrigan* affirmatively and turn to the second prong.

2. Denial of Economic Use.

Obviously, these regulations are not tantamount to a complete condemnation of the hospital. The question for the court then is whether the regulation is so severe as to deny the owner a reasonable economic use of the property and whether, in justice and fairness, the burden should fall on the hospital or on the public as a whole. *Penn Central Transp. Co. v. City of New York*, 438 U.S. 104, 123-24, 98 S.Ct. 2646, 2659, 57 L.Ed.2d 631, 648 (1978); *Ranch 57*, 152 Ariz. at 226-27, 731 P.2d at 121-22.

The *Penn Central* Court, noting that this determination is essentially an ad hoc factual inquiry, identified several significant factors. The first factor mentioned in *Penn Central* is the economic impact of the regulation on the plaintiff, particularly the extent that the regulation has interfered with the plaintiff's "investment-backed expectations." *Id.* 438 U.S. at 123-24, 98 S.Ct. at 2659. We have absolutely nothing in the record to indicate the extent to which these regulations have

effected St. Joseph's profitability. We know that St. Joseph's is unable to collect on the Neu account, totaling \$50,066.45. We do not know what percentage of that figure is expected profit, nor do we know the impact these regulations have had on the hospital's *overall* profitability. Presumably, these "bad debts" are absorbed by the hospital as a cost of doing business and are ultimately passed on the consumer. St. Joseph's has not provided us with adequate information upon which we could determine that it has suffered economic hardship tantamount to an unconstitutional taking.

3. Governmental Action.

Another factor mentioned in *Penn Central* is the "character of the governmental action." The Court explained:

A 'taking' may more readily be found when the interference with property can be characterized as a physical invasion by government, . . . than when interference arises from some public program adjusting the benefits and burdens of economic life to promote the common good.

Id. (citation omitted). Here, the regulations fall far short of that which is traditionally considered an unconstitutional taking. The state has not "invaded" the hospital but has simply required hospitals, as a condition of doing business in Arizona, to accept emergency patients without regard to their ability to pay. The state or county will reimburse the hospital for the care extended to qualified indigents. For all patients who do not qualify as indigent, the hospital must look to the patient for reimbursement.

The regulation mandating emergency care benefits the common good (not only the poor or uninsured) because no one can be denied emergency care for failing to provide proof of insurance or credit worthiness. The aspect of the regulation that denies families county-funded health care if one spouse possesses assets in excess of the statutory limit also benefits the common good, because it encourages families to pay for services rendered for family members rather than allowing that burden to fall on state coffers.

Having reviewed the relevant factors, we cannot find that, in the case of Donald Neu, this regulatory scheme amounts to an unconstitutional taking of the hospital's property.

RESTITUTION

[6] As a final issue for appeal, St. Joseph's contends it should be able to collect from the county on a theory of restitution. Appellant cites to sections 114 and 115 of the *Restatement of Restitution* in support of its theory. The fatal flaw in appellant's argument is that for the county to be liable for Donald Neu's emergency care under a restitution theory, it must have had a duty to provide that care. St. Joseph's claims that the county's duty arises from A.R.S. § 11-291, which requires the county to provide medical care to indigents. As we have determined earlier in this opinion, the county had no duty to provide care for Donald Neu, because he did not qualify as an indigent. Because the county had not duty, it is also not liable in restitution.

CONCLUSION

For the foregoing reasons, the decision of the trial court is affirmed.

KLEINSCHMIDT, P.J., and FIDEL,
J., concur.

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**MARICOPA COUNTY SUPERIOR COURT
MINUTE ENTRY DATED OCTOBER 16, 1987**

ST. JOSEPH'S HOSPITAL
Plaintiff,
v.
MARICOPA COUNTY,
Defendant.

No. C544264
Superior Court
of Arizona
Maricopa County
October 16, 1987
Code CC 15-21525

Hon. Bernard J. Dougherty, Judge

Richard Burnham
County Attorney
By: Gordon Goodnow, Jr.

9:00 a.m. This is the time set for hearing cross-motions for Summary Judgment. Above named counsel appear on behalf of the respective parties. The Clerk is not present.

No Court Reporter is present.

The Court hears argument on cross-motions for partial summary judgment on Plaintiff's claim for unpaid charges for patient Donald Neu.

The matter is then taken under advisement.

* * * * *

LATER:

The Court has considered the Motions, Responses, Replies and oral argument thereon. The Court determines there are no material issues of fact precluding summary judgment from being entered.

Plaintiff submits St. Joseph's and Mr. Neu satisfied all applicable statutory requirements for indigency under the statutes and that, in order to avoid an unconstitutional application of A.R.S. 11-297, and a taking of private property

without just compensation, the County is obligated to pay the balance of the hospital bill incurred by the indigent patient.

Defendant County maintains the Neu household did not qualify under applicable statutes and regulations as indigent for County payment of the unpaid balance of the hospital services by virtue of the Neu family household assets.

Plaintiff urges application of traditional community property concepts in applying the Statutes and regulations in determining indigency, excluding a spouse's separate property in such determination.

Defendant County maintains the law clearly provides that, for purposes of eligibility for health care at public expense, separate property concepts which may have meaning under other statutory schemes do not apply.

The Court, in examining the argument and authorities cited, is constrained to agree with Defendant County that this Court must follow the plain meaning of the statute, absent an ambiguity, notwithstanding seemingly harsh results.

The Court determines that application of the A.R.S. 11-297.01(B)(2) indigency standards to the Neu household does not amount to violations of due process, or to a taking of property without just compensation or impinge on traditional concepts of property rights in other areas of statutory law.

Plaintiff's Motion for Partial Summary Judgment is denied. Defendant's (sic) Cross-motion for Partial Summary Judgment is granted.

Defendant is to submit a form of judgment for the Court's consideration within 10 days.

**SUPREME COURT OF ARIZONA
ORDER DENYING REVIEW**

ST. JOSEPH'S HOSPITAL
AND MEDICAL CENTER,
Plaintiff-Appellant,

v.

MARICOPA COUNTY,
Defendant-Appellee.

Supreme Court
No. CV-89-0376-PR

Court of Appeals
No. 1 CA-CV 88-047

Maricopa County
No. C-544264

GREETINGS:

The following action was taken by the Supreme Court of the State of Arizona on February 26, 1990, in regard to the above-referenced cause:

ORDERED: Petition for Review = DENIED.

Record returned to the Court of Appeals, Division One, Phoenix, this 27th day of February, 1990.

NOEL K. DESSAINT, Clerk

TO:

Richard B. Burnham, Esq., Curtis Ullman, Esq. and
Tracey L. Fletcher, Esq., Gammage & Burnham
Richard M. Romley, Maricopa County Attorney
Attn: Gordon J. Goodnow, Jr., Esq.
Glen D. Clark, Clerk, Court of Appeals, Division One

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AUTHORITIES
United States Constitution
Amendment V

No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury, except in cases arising in the land or naval forces, or in the Militia, when in actual service in time of War or public danger; nor shall any person be subject for the same offence to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation.

Amendment XIV, § 1

All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

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Arizona Revised Statutes Annotated

11-297. Hospital treatment; application; affidavit; indigency standards; erroneous determinations; definitions

A. Except in emergency cases when immediate hospitalization or medical care is necessary for the preservation of life or limb no person shall be provided hospitalization, medical care or outpatient relief under this article without first filing with the board of supervisors of the county in which he resides a statement in writing, subscribed and sworn to under oath, that he is an indigent as defined by subsection B of this section.

B. For the purposes of this section, an "indigent" is a resident of the county who:

1. Does not have an annual income in excess of:

(a) Two thousand five hundred dollars, for one individual.

(b) An additional thirty-three and one-third per cent of the base identified in subdivision (a) of this paragraph if living with a dependant member of the family household, or if married and living with a spouse.

(c) An additional seventeen per cent of the base identified in subdivision (a) of this paragraph for each additional dependent member of the family household.

Annual income shall be calculated by multiplying by four the applicant's income for the three months immediately prior to the application for eligibility for the Arizona health care cost containment system pursuant to title 36, chapter 29.

2. Does not have resources of all persons in the household, including but not limited to equity in a house or car, with a net worth in excess of thirty thousand dollars, with no more than five thousand dollars cash or other liquid assets.

3. Has not, within three years prior to filing an application for eligibility for the Arizona health care cost containment system pursuant to title 36, chapter 29, transferred or as-

signed real or personal property with intent to render himself eligible for such system.

C. For the purposes of subsection B of this section, each applicant shall provide a statement of the amount of personal and real property in which the applicant has an interest, a statement of all income which the applicant received during the three months immediately prior to the application, and a statement of any personal and real property assigned or transferred by the applicant within a three year period immediately prior to filing an application for eligibility for the Arizona health care cost containment system pursuant to title 36, chapter 29 and any further information determined through rules and regulations by the director of the Arizona health care cost containment system administration.

§ 25-214. Management and control

A. Each spouse has the sole management, control and disposition rights of his or her separate property.

B. The spouses have equal management, control and disposition rights over their community property, and have equal power to bind the community.

C. Either spouse separately may acquire, manage, control or dispose of community property, or bind the community, except that joinder of both spouses is required in any of the following cases:

1. Any transaction for the acquisition, disposition or encumbrance of an interest in real property other than an unpatented mining claim or a lease of less than one year.

2. Any transactions of guaranty, indemnity or suretyship.

§ 25-215. Liability of community property and separate property for community and separate debts

A. The separate property of a spouse shall not be liable for the separate debts or obligations of the other spouse, absent agreement of the property owner to the contrary.

B. The community property is liable for the premarital separate debts or other liabilities of a spouse, incurred after September 1, 1973 but only to the extent of the value of that spouse's contribution to the community property which would have been such spouse's separate property if single.

C. The community property is liable for a spouse's debts incurred outside of this state during the marriage which would have been community debts if incurred in this state.

D. Except as prohibited in § 25-214, either spouse may contract debts and otherwise act for the benefit of the community. In an action on such a debt or obligation the spouses shall be sued jointly and the debt or obligation shall be satisfied: first, from the community property, and second, from the separate property of the spouse contracting the debt or obligation.